IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5580 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASINABEN IBRAHIMBHAI SANDHI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5580 of 2001

MR PRAVIN GONDALIYA for Petitioner No. 1

MR SS PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/12/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 21-5-2001 passed by the Police Commissioner, Rajkot City and she has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. I have also heard learned AGP for the State. It is submitted by the learned advocate for the petitioner that the authority has relied upon four offences (page 16 of the compilation) of prohibition cases in passing the detention order and last offence was registered on 20-4-2001 whereas the order of detention was passed on 21-5-2001 and hence, there is a delay of about one month in passing the detention order. It is also submitted by him that there are two statements of witnesses recorded on 17-5-2001 and both are verified on the next day i.e. on 18-5-2001. According to learned advocate for the petitioner, the detenu has demanded by way of a representation dated 26-6-2001 through advocate by R.P.A.D. to supply copies of certain documents and same has been received by the jail authority on 28-6-2001 and same has been forwarded to the authorities on 28-6-2001 and though a communication has been received by the detenu on 1-7-2001, copies of the documents demanded were not supplied to her and, therefore, it is a point which is required to be taken into consideration and and no explanation has been putforward by the authority for not supplying the same. Even no affidavit has been filed by the authority. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining

authority".

4. Since no affidavit has been filed either by the detaining authority or by the State authority explaining satisfactorily the reasons for not supplying the documents and justifying the grounds attached with the order of detention, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 21-5-2001 passed against the detenu is hereby quashed and set aside. The detenu Hasinaben Ibrahimbhai Sandhi is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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